

OGC Has Reviewed

Harwood v. McMurtry, 22 F.Supp. 572 (D. C., W. D. Ky. 1938).

This case was an action for libel, alleging that the defendant was an Internal Revenue Agent who made a report, in the course of his official duty, to his superior, which report is alleged to be defamatory. The question before the Court was whether the law affords a public officer absolute protection and immunity from liability on account of a false statement maliciously made in a community to his superior in the course and discharge of official duties. Citing the Vilas case, the Court states the rule of absolute privilege as including the head of an Executive Department of the Government. Citing the cases of De Arnaud v. Ainsworth, Farr v. Valentine, and U. S. v. Brunswick, the Court rules that the rule -

"...has been further extended so as to reach and include subordinate government officers when engaged in the discharge of duties imposed upon them by law. The seriousness of affording such protection, under the cover of which officers of the Government, under the guise of official duty, may make a false and malicious statement subjecting another to scorn and ridicule with ensuing damages, without the injured party being able to secure legal redress, cannot be doubted. These considerations, however, are held to be outweighed by an imperative public policy that perfect freedom in the discharge of public duty is essential to the maintenance of efficient public service and must be preserved without restraint. Upon this ground the question seems to have been settled. It is clearly pointed out that when an officer departs from official duty and indulges in defamatory statements, wholly irrelevant and foreign to its scope, he is not entitled to protection, but otherwise he is afforded absolute immunity. Improper motive, bad faith, or false statement of facts are not material questions for the reason that no liability arises on account thereof when

- 2 - (Harwood v. McMurtry)

involved in the exercise of official duty.> It seems unnecessary to repeat the exhaustive discussions of the question presented in the cases referred to. <It is sufficient to say that the question appears to have been settled by the Supreme Court, and we are bound by the decision." (At pages 572 and 573).>